(V)

~~C.F. 1881~~

(C.F. 9840)

(A)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

(CHHATTISGARH)

F. A. No.135 /2005

SINGLE BENCH

APPELLANT
DEFENDANT : Chandrashekhar Sahu aged bout 37 years, S/o Shri Jethuram Sahu, R/o Village Bendri, Tah. Abhanpur, Distt. Raipur (C.G.)

2928/05 1720/05

P.R.I. Present B.R. Mathur dated 29/6/05

VERSUS

RESPONDENT
PLAINTIFF : Smt. Bhagwati Devi aged About 65 years Wd/o Vimal Chand Agrawal, R/o 65 Vivekanandnagar Raipur, Tah & Distt. Raipur (C.G.)

FIRST APPEAL U/S. 96 OF C.P.C

APPEAL AGAINST THE JUDGMENT AND DECREE DATED 21.04.2005 PASSED IN CIVIL SUIT NO. 42-A/2003 BY 5TH ADDITIONAL DISTRICT JUDGE RAIPUR . (C.G.)

35

A.F.R

HIGH COURT OF CHHATTISGARH, BILASPUR

First Appeal No. 135/2005

Chandrashekhar Sahu

Versus

Bhagwati Devi

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh,J.

Post for dated : 29.01.07

Sd/-
Dilip Raosaheb Deshmukh
Judge
29.01.2007.

(36)

A.F.R.

HIGH COURT OF CHHATTISGARH, BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh,J.

First Appeal No. 135/2005

Chandrashekhar Sahu

Versus

Bhagwati Devi

Shri Ratan Pusty, counsel for the appellant.
Shri B.P. Sharma, counsel for respondent.

J U D G M E N T

(Delivered this day 29th January, 2007)

Being aggrieved by the judgment and decree dated 21.4.2005 passed by the Fifth Additional District Judge, Raipur in Civil Suit No. 42-A/2003 awarding damages quantified at Rs.70,000/- to the plaintiff along with interest @ 6% per annum from the date of judgment till recovery, the defendant has preferred this First Appeal.

2. Admittedly, the plaintiff owns agricultural land Khasra No. 106/7 and 120/11 total 5.176 hectares in Village Bendri, Patwari Halka No. 135, Tahsil Abhanpur, District Raipur (hereinafter referred to as the suit land) and had sown paddy therein in the year 1999-2000.

3. The plaintiff had pleaded that on 25.11.1999 while her son was conducting harvesting operations on the suit land, the defendant after preventing him from doing so on the ground that the land was leased to him by Pavan Kumar Agrawal, forcibly cut 200 bags of paddy crop costing Rs. 70,000/- (i.e. @ Rs.300/- per bag) which stood on the suit land. The plaintiff lodged F.I.R. vide

Ex. P.-2 in Police Station Abhanpur on 27.11.1999. On these premises, the plaintiff claimed damages of Rs. 76,900/- and interest @ Rs.1.5% per month.

4. The defendant specifically denied having cut the paddy crops which stood on the suit land. He pleaded that he had taken land from one Pavan Kumar Agrawal on lease and had sown paddy and performed harvesting operations thereon and a false report was lodged by the plaintiff in police station Abhanpur. It was also pleaded that due to strained relations with Pavan Kumar Agrawal, the plaintiff had falsely implicated the appellant.

5. The plaintiff proved the General power of attorney Ex. P-1 executed in favour of her son Shreesh Chandra Agrawal (PW-1) and the report Ex. P-2 lodged at police station, Abhanpur on 27.11.1999 and also examined Shreesh Chandra Agrawal (PW-1) and witness Hemlal (PW-2), Patwari Kanhai Singh (PW-3) and Punu Ram (PW-4). The defendant examined himself and witness Pavan Kumar Agrawal (DW-2).

6. The learned lower Court while appreciating evidence adduced by the parties observed that the defendant did not specifically deny either in the written statement or in his evidence that he had cut the crops from the suit land on 25.11.1999. On this ground, the learned lower Court came to the conclusion in para 12 that for want of specific denial, the fact that the defendant had cut the paddy crops which stood on the suit land on 25.11.1999 was an admitted fact. It also held that the plaintiff had by examining Patwari Kanhai Singh (PW-3) and producing Anawari Report Ex. P-7 had proved that 200 bags of paddy was grown on the suit land which fact was also wholly unrebutted. It further

38

held at the end of para 13 that the evidence led by the plaintiff undisputedly proved that the plaintiff had suffered loss of 200 bags of paddy which was grown on the suit lands in the year 1999-2000. Although Patwari Kanhai Singh (PW-3) had deposed that in 1999-2000 approximately 180 bags of paddy crop must have yielded from the suit land yet the learned Lower Court awarded damage for 200 bags paddy @ Rs.350/- per bag and further awarded interest @ Rs.1.5% per month on Rs.70,000/- from the date of judgment till recovery while reiterating in para 15 that for want of specific denial by the defendant in his testimony, it was also an admitted fact that the defendant had in the year 1999-2000 cut the paddy crop of 200 bags from the suit land.

7. Shri Ratan Pusty, learned counsel for the appellant has contended that the findings recorded by the learned Lower Court were perverse and contrary to the pleadings and evidence on record. The testimony of the plaintiff in para 4 that the defendant had cut the paddy crop for two days was not corroborated by report Ex. P-2. In the report Ex. P-2 lodged in police station Abhanpur on 27.11.1999 the plaintiff had mentioned that the Station House Officer of Police Station Abhanpur Shri Santosh Dubey was present on the suit lands on 25.11.1999 and had under his supervision got the entire crop cut. However, no evidence was adduced by the plaintiff to that effect. It was argued that in para 2 of the report Ex. P-2, there was no mention that the defendant Chandra Sekhar Sahu had cut the paddy crop. It was also contended that Patwari Kanhai Singh (PW-3) had clearly admitted in cross-examination that in Anawari Report Ex. P-7, the name of the plaintiff or Pavan Kumar Agrawal or the

(39)

defendant was not mentioned and that he had no personal knowledge as to the yield of paddy crop in 1999-2000 from the suit land. It was also contended that Shreesh Chandra Agrawal (PW-1) had in para 9 of his testimony failed to give any account of the agricultural operations conducted by him on the suit land in the year 1999-2000. Since the defendant had specifically denied plaint allegations in para 2 of the written statement and had specifically deposed in para 4 of his testimony that he did not perform any agricultural operations on Khasra No. 106/7 and 120/11, the inference drawn by the learned lower Court that for want of specific denial, the pleadings in plaint were admitted by the defendant was wholly contrary to law.

8. On the other hand, Shri B.P. Sharma, learned counsel for the respondent/plaintiff placed reliance on ***Santosh Hazari Vs. Purushottam Tiwari; 2000 (3) SCC 179*** while contending that since the learned lower Court had dealt with the evidence led by the parties at length and had given cogent reasons for granting a decree in favour of the plaintiff the Appellate Court should not interfere with the finding of fact arrived at by the lower Court. It was also argued that civil cases are decided on preponderance of probabilities and unless it was shown that the view taken by the learned lower court was perverse, it should prevail and ought not to be interfered in First Appeal.

9. Having considered the rival submissions, I have perused the record of Civil Suit No. 42-A/2003 with utmost circumspection.

10. At the very outset it must be said that the learned lower Court proceeded on an erroneous assumption that the defendant had not specifically denied the allegation of having cut the crops on

the suit lands on 25.11.1999. A perusal of para 2 of the written statement clearly shows that the defendant had specifically denied the pleadings of the plaintiff in that regard. Similarly, in para 4 of his testimony the defendant testified that he did not perform any agricultural operations on the suit land. In this view of the matter, the very foundation on which the learned lower Court proceeded to accept the evidence of the plaintiff's witnesses as a gospel truth is demolished. In view of the specific denial of the allegations in the plaint by the defendant in para 2 of the written statement, the conclusion drawn by the learned lower Court under Order 8 Rule 5(1) of C.P.C. that the allegation of cutting paddy crop of the suit land by the defendant was an admitted fact was wholly erroneous and contrary to the law of pleadings.

11. The plaintiff has proved the report Ex. P-2 lodged by her and Shreesh Chandra Agrawal (PW-1) in Police Station, Abhanpur. It does not mention in any manner that the defendant had cut the paddy crops which stood on the suit lands on 25.11.1999. On the contrary, it mentions that one Santosh Dubey, Station House Officer, Police Station Abhanpur had under his personal supervision got the entire paddy crops of the suit lands cut on 25.11.1999. Neither Shreesh Chandra Agrawal (PW-1) nor his witnesses Hemlal (PW-2) or Punu Ram (PW-4) have stated about the presence of Santosh Dubey, S.H.O., Police Station Abhanpur on the suit land on 25.11.1999 which completely falsified the report Ex. P-2.

12. The report Ex. P-2 further makes a clear allegation that the crops were cut only on 25.11.1999. However, Shreesh Chandra Agrawal PW-1 stated in para 4 that the crops which stood on the

suit lands were cut within a period of two days. This part of the testimony is also not corroborated by plaintiff's witness Punu Ram (PW-4) who stated that the crop was cut only on one day. His testimony that the paddy crop of the suit land which was around 13 acres in area were cut by six labourers in one day does not inspire confidence being an impossibility. Although Punu Ram (PW-4) stated that the defendant was accompanied by 6-7 persons yet the name of any of such persons was not divulged. Similarly, although Shreesh Chandra Agrawal (PW-1) had stated in para 3 that on the date of occurrence he was harvesting the crops which stood on the suit lands yet Punu Ram (PW-4) has stated that Shreesh Chandra Agrawal was alone at the place of occurrence. It is also pertinent to note that Hemlal (PW-2) who was present on the suit land on the date of occurrence also did not state that the defendant had cut the crops which stood over the suit land. All that he deposed was that the defendant arrived on the suit land and asked the plaintiff not to cut the crops since he had taken the lands from Pavan Kumar Agrawal. In view of the fact that the allegations in the report Ex. P-2 are not substantiated by the evidence led by the plaintiff it cannot be ruled out that the plaintiff had lodged a false report against the defendant.

13. So far as the quantum of the damages awarded by the learned lower Court is concerned, it has placed heavy reliance on the testimony of Patwari Kanhai Singh (PW-3). However, the conclusion arrived at by the learned lower Court was wholly erroneous because it excluded from consideration the testimony of Patwari Kanhai Singh in cross-examination wherein he had admitted that he had no personal knowledge about the yield of

paddy crops on the suit land in the year 1999-2000 and the Anawari Report Ex.P-7 did not make any mention of the suit lands.

14. Shreesh Chandra Agrawal (PW-1) stated in para 3, that there was an assault on him at the time of the occurrence but did not mention as to who assaulted him. No such fact is mentioned in his report Ex. P-2 also. No other witness has corroborated him. Shreesh Chandra Agrawal also failed to give any account in cross-examination about the agricultural operations conducted by him on the suit land in the year 1999-2000.

15. There is no evidence on record as to how many stacks of paddy were cut and in what manner were they removed from the suit land and by whom? The testimony of Shreesh Chandra Agrawal (PW-1) does not show anywhere that the defendant had employed any labourer for cutting paddy crops which stood on the suit land. It cannot thus be ruled out that the plaintiff lodged a false report against the defendant. The evidence led by the plaintiff is not only untrustworthy but is highly contradictory with the report Ex. P-2. In a suit of the present nature, the plaintiff was required to establish by leading cogent evidence, the exact number of paddy stacks removed by the defendant from his field and the manner in which huge amount of paddy stacks which would yield about 200 bags of rice could be removed from the suit lands. The learned lower Court upon a wholly erroneous appreciation of the evidence and on completely wrong assumption that there was no specific denial either in the written statement or in the evidence of the defendant came to a wholly erroneous conclusion that the plaintiff had succeeded in proving its case.

16. It is also pertinent to note that although the defendant had in para 4 specifically denied having performed any agricultural operations on the suit lands but no question was asked to the defendant in cross-examination that he had cut the paddy crops yielding 200 bags of rice from the suit land. Thus, as a matter of fact, the testimony of the defendant had remained wholly unrebutted. It is also noteworthy that no question was put to Pavan Agrawal (DW-2) in cross-examination that the defendant had cut the paddy crops which stood on the suit land. The learned lower Court completely lost sight of the above fact while appreciating the evidence of the above parties.

17. Having thus considered the evidence led by the parties in its entirety and with utmost circumspection, I am of the considered view that the findings arrived at by the learned Trial Court and the reasons assigned therefor were completely erroneous. There was no conscious application of mind by the learned lower Court to the evidence adduced by the parties and it also did not take into consideration the improbability of the allegations levelled against the defendant. It also lost sight of the fact that the defendant's evidence was wholly unrebutted. The inference that there was no specific denial either in the written statement or in the testimony of the defendant about the allegations of cutting the paddy crop from the suit land by the defendant was wholly erroneous. The cross-examination of Patwari Kanhai Singh (PW-3) also completely escaped the trial judge's notice and it also overlooked the balance of improbability which would have displaced its opinion as to the credibility of the evidence led by the plaintiff. The quantum of damages fixed by the learned lower Court was also wholly arbitrary

and not supported by any reliable oral evidence. I am therefore, of the considered view that the judgment and decree passed by the learned lower Court is wholly erroneous and contrary to evidence on record and the law of pleadings and is therefore, liable to be set aside.

18. In the result, this appeal is allowed. The judgment and decree passed in Civil Suit No. 42-A/2003 by the Fifth Additional District Judge, Raipur is set aside. The suit for recovery of damages is dismissed with costs. The respondent/plaintiff shall bear the entire cost of the suit, as also of this appeal. Pleader's fee is quantified at Rs.500/- if certified. A decree be drawn accordingly.

Sd/-
Dilip Raosaheb Deshmukh
Judge

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